



The Estates of Solomon and Gertrude Englander (the “Englanders”), defendants in this action, respectfully submit this Joinder to the Motions of Defendants Estate of Jules Nordlicht, *et al.* (Dkt. Nos. 68, 69) (“Nordlicht Motion”) and Defendant David Bodner (Dkt. Nos. 71, 72) (“Bodner Motion”) to Dismiss the Complaint for Failure to State a Claim.

At a hearing before this Court on December 19, 2018 (the “Hearing”), counsel for Mr. Bodner stated their intention to move to dismiss, citing, among other things, plaintiff’s impermissible group pleading. Numerous counsel for other defendants voiced similar objections. (For the convenience of the Court, a copy of the transcript is annexed hereto as Exhibit A.)

Our understanding of the Court’s oral ruling at the Hearing was that any defendants who wished to join in the Bodner Motion could file a simple “me too” pleading on or prior to January 9. (Tr. 11:11-14, 12:10-11, 14:3-6.) However, other motions to dismiss, on more particularized grounds, would be reserved for a date to be set later, pursuant to the case management plan. (Tr. 15:21-25, 16:1-12.)

### **ARGUMENT**

The Complaint first defines the Englanders as “Preferred Investors” – lumping them in with twenty-three other unaffiliated individuals and entities. (Cmplt. ¶ 57.) The Complaint then names the Englanders as defendants in three counts: aiding and abetting breach of fiduciary duty (sixth count); aiding and abetting fraud (seventh count); and unjust enrichment (twelfth count). The Complaint then simply makes generalized, conclusory allegations about the Preferred Investors (*see id.* ¶¶ 628, 642), without giving any indication of what specific actions the Englanders allegedly took, let alone what actions would subject them to liability.

The Nordlicht Motion requests dismissal as to defendants who, according to that motion, were purely investors, as were the Englanders. The Englanders accordingly join in the Nordlicht Motion and the Bodner Motion, and request dismissal of all claims against them, for the “group pleading” reasons set forth in those papers.<sup>1</sup>

In accordance with this Court’s oral ruling at the Hearing, the Englanders reserve the right to file a motion to dismiss, on more particularized grounds, in accordance with a case management order to be entered at a later date.

### **CONCLUSION**

For the foregoing reasons, the Complaint should be dismissed against the Estates of Solomon Englander and Gertrude Englander in its entirety.

Dated: January 9, 2019  
New York, New York

LOEB & LOEB LLP

By: /s/ P. Gregory Schwed

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<sup>1</sup> Although not necessary for purposes of this Joinder, we note that the Englanders, unlike some other defendants, were purely investors and at no time had any role whatsoever in Platinum's operations or management. Far from having any collusive involvement in Platinum, they were duped elderly investors, who lost collectively well over \$1 million in the Platinum meltdown. At the time of Platinum's collapse in 2016, Mr. Englander had been dead for a year (passing away at the age of 92), and Mrs. Englander (who is now also deceased) was 83.

# **EXHIBIT A**

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1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x  
3 MARTIN TROTT and CHRISTOPHER  
4 SMITH, as Joint Official  
5 Liquidators and Foreign  
6 Representatives of PLATINUM  
7 PARTNERS VALUE ARBITRAGE FUND  
8 L.P. (in OFFICIAL LIQUIDATION)  
9 and PLATINUM PARTNERS VALUE  
10 ARBITRAGE FUND L.P. (in  
11 OFFICIAL LIQUIDATION),

12 Plaintiffs,

13 v.

18 Civ. 10936 (JSR)

14 PLATINUM MANAGEMENT (NY) LLC,  
15 et al.,

16 Defendants.

Conference

17 -----x  
18 New York, N.Y.  
19 December 19, 2018  
20 11:11 a.m.

21 Before:

22 HON. JED S. RAKOFF,  
23 District Judge

24 APPEARANCES

25 HOLLAND & KNIGHT LLP  
Attorneys for Plaintiffs  
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BARBRA R. PARLIN, ESQ.  
MITCHELL J. GELLER, ESQ.  
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Attorneys for Defendant Estate of Uri Landesman  
BY: ERIC R. BRESLIN, ESQ.

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APPEARANCES  
(Continued)

1 CURTIS, MALLETT-PREVOST, COLT & MOSLE, LLP

2 Attorneys for Defendant David Bodner

3 BY: ELIOT LAUER, ESQ.

4 GABRIEL HERTZBERG, ESQ.

5 JACQUES SEMMELMAN, ESQ.

6 LANKLER SIFFERT & WOHL LLP

7 Attorneys for Defendant David Steinberg

8 BY: MATTHEW G. COOGAN, ESQ.

9 DAVID E. HODGES, ESQ.

10 LEVINE LEE LLP

11 Attorneys for Defendant Daniel Small

12 BY: CHRISTOS G. PAPAPETROU, ESQ.

13 KATSKY KORINS LLP

14 Attorneys for Defendant Gregg Donnenfeld

15 BY: STEVEN B. FEIGENBAUM, ESQ.

16 PIERCE BAINBRIDGE

17 Attorneys for Defendant David Ottensoser

18 BY: ERIC M. CREIZMAN, ESQ.

19 NOVAK, JUHASE & STERN LLP

20 Attorneys for Defendant Bernard Fuchs

21 BY: KIM STEVEN JUHASE, ESQ.

22 THOMPSON & KNIGHT, LLP

23 Attorneys for Defendant Michael Katz

24 BY: BRITTNEY M. EDWARDS, ESQ.

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TOVIA JAKUBOWITZ, ESQ.

Attorney for Defendants Ditmas Park, Rockwell Fulton

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APPEARANCES  
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1 (Case called)

2 THE DEPUTY CLERK: Will the parties please identify  
3 themselves and their client for the record. If I didn't call  
4 your name before, please identify yourself really slowly.  
5 Please begin, sir.

6 MR. GLUCK: Warren Gluck, Holland & Knight, on behalf  
7 of Martin Trott and Christopher Smith, and Platinum Partners  
8 Value Arbitrage Fund L.P., plaintiffs in this matter. In the  
9 courtroom is Martin Trott, the joint official liquidator of  
10 Platinum Partners Arbitrage Fund; Barbra Parlin, Holland &  
11 Knight; Mitchell Geller, also of Holland & Knight; Qian Shen,  
12 also of Holland & Knight; and Mr. Elliot Magruder, also of  
13 Holland & Knight.

14 THE COURT: Okay.

15 MR. CREIZMAN: Good morning, Judge. Eric Creizman on  
16 behalf of David Ottensoser.

17 MR. LAUER: Good morning, your Honor. Eliot Lauer,  
18 Curtis, Mallet-Prevost, Colt & Mosle, LLP, for David Bodner,  
19 and with me today is my partner Gabriel Hertzberg.

20 MR. BRESLIN: Good morning, your Honor. Eric Breslin,  
21 Duane Morris, for the Estate of Uri Landesman.

22 MS. EDWARDS: Brittney Edwards for defendant Michael  
23 Katz, with the firm of Thompson & Knight.

24 MR. JUHASE: Kim Juhase from Novak, Juhase & Stern,  
25 for the defendant Bernard Fuchs.

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1 MR. SOMMER: Good morning, your Honor. I'm Michael  
2 Sommer. I represent David Levy in the related SHIP case. Your  
3 Honor asked us to appear today.

4 THE COURT: Yes.

5 MR. SOMMER: I have not filed a notice of appearance  
6 for Mr. Levy in the Trott case. I do not intend to. He will  
7 be proceeding pro se, since he has no funds for counsel. And I  
8 think you may recall, we made an application in the SHIP case  
9 to be relieved on that changed circumstance, but I don't want  
10 to belabor that now. But I'm here for him today because he's a  
11 criminal defendant. I didn't want him being unrepresented, for  
12 purposes of this conference alone.

13 MR. PAPAPETROU: Good morning, your Honor. Christos  
14 Papapetrou of the firm Levine Lee. Similar to Mr. Sommer, my  
15 firm represents Daniel Small, who is a defendant in this case  
16 but also a criminal defendant in the case that's pending before  
17 Judge Cogan in the Eastern District of New York. We represent  
18 him in that case and received a notice from plaintiff's counsel  
19 about the hearing today, so we wanted to come here as we  
20 received the order from the Court. Mr. Small, as I understand  
21 it, has not been served yet, and we have not yet resolved  
22 whether we will be representing him in this action. So we have  
23 not filed a notice of appearance. But I wanted to be here, as  
24 we received the order from your Honor.

25 THE COURT: Thank you.

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1 MR. MOSKOWITZ: Good morning, your Honor. Avraham  
2 Moskowitz of the firm of Moskowitz & Book on behalf of Platinum  
3 F.I. Group, LLC.

4 MR. ZITTER: Good morning, your Honor. Kenneth A.  
5 Zitter on behalf of Morris Fuchs and respondents Aaron Parnes,  
6 the Shmuel Fuchs Foundation, Solomon Werdiger.

7 MR. MEDDY: Good morning, your Honor. Jordan Meddy of  
8 Loeb & Loeb on behalf of the defendants the Estates of Solomon  
9 Englander and Gertrude Englander.

10 MR. JAKUBOWITZ: Good morning, your Honor. Tovia  
11 Jakubowitz representing the defendants Rockwell Fulton and  
12 Ditmas Park Capital, L.P.

13 MS. DOHERTY: Good morning, your Honor. Therese  
14 Doherty, Mintz Levin, representing defendants Michael Nordlicht  
15 and Kevin Cassidy, and with me is my colleague Lisamarie  
16 Collins.

17 MR. SCOTT: Good morning, your Honor. Brendan Scott  
18 of Klestadt, Winters, Jureller, Southard & Stevens. We  
19 represent Beechwood Re in the SHIP action. We've not yet  
20 determined whether we'll be representing Beechwood Re in this  
21 case. We believe that we will, but we have not confirmed it  
22 yet with the client.

23 MR. FEIGENBAUM: Good morning, your Honor. Stephen  
24 Feigenbaum with Katsky Korins on behalf of defendant Gregg  
25 Donnenfeld.

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1 MR. COOGAN: Good morning, your Honor. Matthew Coogan  
2 from Lankler Siffert & Wohl LLP on behalf of David Steinberg.  
3 With me here is my colleague David Hodges. We represent David  
4 Steinberg in another matter, and it has not been determined  
5 whether we'll be representing him in this case yet.

6 MR. CANTER: Good morning, your Honor. Edward Canter  
7 and Stacey Eilbaum from Proskauer Rose. We represent Mark  
8 Feuer, Scott Taylor, Dhruv Narain, Illumin Capital Management,  
9 LP, Beechwood Bermuda International, Ltd., Beechwood Re  
10 Investments, LLC, and B Asset Manager, L.P. in the SHIP action.  
11 We haven't been formally retained in this action, but we  
12 anticipate we'll be representing one or more of those entities  
13 here.

14 THE COURT: Well, anyone -- oh, sorry.

15 MR. McCORMACK: Good morning, your Honor. Aidan  
16 McCormack, DLA Piper. With me is James Mathias and Brian  
17 Seibert, also of DLA. You'll recall that we represent  
18 plaintiffs in the separate SHIP action. Thank you.

19 THE COURT: Thank you.

20 UNIDENTIFIED ATTORNEY: Good morning, your Honor. We  
21 represent Twosons in another case, but I don't know whether  
22 we'll be representing them here or not.

23 THE COURT: So let me ask plaintiff's counsel: Who  
24 has not been served?

25 MR. GLUCK: The defendants have not been served.

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1 We've been in communication with --

2 THE COURT: None of the defendants?

3 MR. GLUCK: None of the defendants have been served  
4 yet.

5 THE COURT: What the heck are you doing?

6 MR. GLUCK: We've been attempting to coordinate  
7 accepting service --

8 THE COURT: Come on. Now look, you bring this huge  
9 action, you name half the world. I take it as a related case  
10 on your application because I have the other case that's moving  
11 right along, and the point of your application was, you thought  
12 there were overlapping issues that would lead to duplicative  
13 efforts in discovery. So that means that you've got to move  
14 expeditiously. The first thing you do is effect service. If  
15 you don't effect service in one week, I'm throwing out the  
16 complaint.

17 MR. GLUCK: We will effect service. We've been  
18 discussing the accepting of service with various defendants.

19 THE COURT: You can discuss all you want, but I hear  
20 there are plenty of process servers in the city of New York.

21 MR. GLUCK: There are.

22 THE COURT: One week.

23 MR. GLUCK: One week.

24 THE COURT: Now is there any reason why, given that  
25 service will be effected in one week, we can't adhere to the

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1 same schedule that I've already put for the smaller case that  
2 led to my being blessed with this monstrosity?

3 MR. GLUCK: We've read your decision in the SHIP  
4 matter. As far as adhering to the same schedule, I believe  
5 this Court's order suggested a May trial date. We don't see a  
6 reason on our side why that trial date cannot be adhered to.  
7 We have collected the documents which we believe will be  
8 relevant to this matter. They were formerly housed on the  
9 Platinum Partners' server. They are now with our e-discovery  
10 manager, KPMG, who were hired to handle the e-discovery  
11 associated with this action. We believe that this could be  
12 produced to the defendants fairly expeditiously.

13 Moreover, the party witnesses on our side will, of  
14 course, be the liquidators. We are prepared to proceed with  
15 any discovery on their end.

16 We have received certain requests, during our  
17 communications with either potential or actual counsel for the  
18 defendants, for allowing a motion to dismiss to be decided  
19 prior to the commencement of discovery. We on our end are  
20 prepared to proceed with discovery. However, if there is a  
21 motion filed to stay discovery until the disposition of any  
22 motions to dismiss, we would take the position if and when such  
23 a motion is filed, depending on who files that motion.

24 THE COURT: All right. Well, let me hear from defense  
25 counsel, would-be defense counsel, quasi-defense counsel, and

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1 counsel in other matters related hereto about their proposal,  
2 if anyone has one, for a motion to dismiss.

3 MR. LAUER: Your Honor, Eliot Lauer, Curtis Mallet,  
4 for David Bodner.

5 On November 26, shortly after the complaint was filed,  
6 we contacted Holland & Knight. We said, we're happy to either  
7 waive service or accept service because we believe, in light of  
8 the group pleading, that this complaint is subject to an  
9 efficient motion to dismiss process. So we're prepared to file  
10 a motion to dismiss immediately, and we would ask that, given  
11 the enormity of the documents and the very specific  
12 transactions which do not identify any specific conduct by our  
13 client, that on the one hand we believe a quick and efficient  
14 motion to dismiss process will enable the Court to determine  
15 who's in and who's not, and pending that, there should be a  
16 stay of discovery. If it turns out we're in -- we don't think  
17 we would be in, but if it turns out we're in, we're prepared to  
18 work on a quick but rational discovery process, depending on  
19 what transactions remain.

20 THE COURT: All right. So when do you want to file  
21 that motion?

22 MR. LAUER: We could file it in two weeks. Is that  
23 okay?

24 THE COURT: So let's see. Today is the 19th. So that  
25 would be January 2nd. A good day?

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1 MR. LAUER: Fine with me.

2 THE COURT: Good.

3 All right. How long does plaintiff's counsel want to  
4 respond to that?

5 MR. GLUCK: Their motion, and their motion alone, we  
6 could respond in three weeks.

7 There are two points procedurally that I would like to  
8 note in relation --

9 THE COURT: Forgive me for interrupting.

10 So all you folks who haven't been served yet, you're  
11 going to be served in the next two days. If you want to join  
12 in that motion, you'll have to do so by January 2nd. You're  
13 welcome to put in your own papers, you're welcome to just say,  
14 "Me too," but that same January 2nd date is going to apply to  
15 everyone.

16 So go ahead.

17 MS. EILBAUM: Your Honor, if I may, Stacey Eilbaum  
18 from Proskauer Rose. To the extent that we are retained to  
19 appear in this action on behalf of the Beechwood --

20 THE COURT: I'm sorry. I'm having a little trouble  
21 hearing you.

22 MS. EILBAUM: Stacey Eilbaum from Proskauer Rose. We  
23 have been retained in this action to represent some of the  
24 Beechwood defendants that are currently in the SHIP action. We  
25 would intend to file a motion to dismiss as well and believe we

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1 need more time than January 2nd to respond to the allegations.

2 THE COURT: This a motion to dismiss. I'm not sure  
3 what it is that you need more time for. This does not require  
4 an answer. It's a motion to dismiss.

5 MS. EILBAUM: Understood, but the allegations in the  
6 complaint are in 800 paragraphs, with 96 exhibits, I believe,  
7 which would require at least some time to digest and put  
8 together the motion to dismiss.

9 THE COURT: What is it you need to find out that's  
10 going to take so long? Remember, all you need to do, in  
11 theory, is say, "Me too." But you may want to make your own  
12 specific presentation as to why the motion to dismiss should be  
13 granted on your client's behalf, but why is it you need more  
14 time?

15 MS. EILBAUM: There are unique allegations that are  
16 lodged against the Beechwood defendants, including alter ego  
17 liability, civil RICO, aiding and abetting fraud, and fiduciary  
18 duty that would have put us in line with the other defendants  
19 on moving to dismiss. Beechwood --

20 THE COURT: Let me go back to Mr. Lauer. Tell me in a  
21 little more detail the ground for your motion.

22 MR. LAUER: With respect to the 700-odd paragraphs,  
23 the only --

24 THE COURT: A short and concise statement of the case.

25 MR. LAUER: Exactly, exactly. On the one hand you

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1 have a litany of very specific allegations with respect to a  
2 handful of defendants, and with respect to my client and a  
3 number of other clients, who are simply included in one or more  
4 groups, I think --

5 THE COURT: That's what I -- so you're not in that  
6 situation? There are specific allegations with respect to your  
7 client?

8 MS. EILBAUM: There are, your Honor.

9 THE COURT: I see. So how long do you want?

10 MS. EILBAUM: We would request till the end of  
11 January.

12 THE COURT: What? Forget it. How many lawyers are  
13 there at Proskauer? 500, 600? They're all taking off between  
14 now and the end of February, an extended holiday? Come on.

15 MS. EILBAUM: No, your Honor. Would January 15th --

16 THE COURT: No, it wouldn't. The pitch from defense  
17 counsel who spoke before, Mr. Lauer, is that we can simplify  
18 this case before getting into discovery by having a quick  
19 motion along the lines he's indicated, which he believes will,  
20 at a minimum, streamline who's in the case and who's not. He  
21 may be right, he may be wrong. I don't know. We'll find out.  
22 But it would be counterproductive to have that motion practice  
23 extend over months. If I'm going to stay discovery, which I  
24 don't usually do, it's only because we're going to get this  
25 done quickly and then we'll have a simpler situation. So I, in

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1 a moment of weakness, was willing to give you a week more, to  
2 January 9th, but if you're asking more than that, the answer is  
3 no. Would you like January 9th?

4 MS. EILBAUM: I will gladly take you up on your  
5 generous offer.

6 THE COURT: All right.

7 MS. EDWARDS: Your Honor, I represent defendant Katz,  
8 and we are also proceeding in New York State court with an  
9 action against some of the --

10 THE COURT: So New York State court, you won't have to  
11 worry until 2023.

12 MS. EDWARDS: Correct, but we just received a motion  
13 to dismiss in that case with a response date of I believe the  
14 3rd, so I would also ask until January 9th.

15 THE COURT: Yes, that's fine. I'm going to give  
16 everyone January 9th, including moving counsel.

17 MR. SOMMER: Your Honor, sorry. On behalf of  
18 Mr. Levy, as we explained to your Honor in the SHIP case, which  
19 resulted in your order adjourning his discovery obligations  
20 until after the criminal trial is completed, in this case, as  
21 he's going to be pro se and without counsel, and given that he  
22 is devoting all of his time preparing for the criminal case, I  
23 just don't want to sit silent and somehow waive his rights to  
24 make a motion if he wants to make a motion. My request is that  
25 any motion for Mr. Levy be adjourned until after the criminal

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1 trial so he can actually take the time needed to look at this  
2 case.

3 THE COURT: Well, you know, I've had some sympathy for  
4 Mr. Levy's predicament, and I really appreciate that you and  
5 other counsel have been helpful to the Court in a position  
6 where you could, in theory, just not show up at all. But to  
7 accommodate that, as you know, I stayed all discovery with  
8 respect to him in the other case.

9 MR. SOMMER: Yes.

10 THE COURT: But this is just a question of making a  
11 motion. How long could it take him?

12 MR. SOMMER: Well, he's not an attorney.

13 THE COURT: No, no, no, but I understand he has a very  
14 able attorney helping him out --

15 MR. SOMMER: Well, to the extent any --

16 THE COURT: -- pro bono at the moment.

17 MR. SOMMER: Pro bono. To the extent it would just be  
18 a "Me too," that would not be problematic. To the extent it  
19 requires analysis of this significant complaint and making  
20 arguments about lack of particularity or other arguments --

21 THE COURT: I am not precluding -- let me make this  
22 clear. Maybe this will put your fears to rest. I am not  
23 precluding other motions to dismiss on other more  
24 particularized grounds, and once everyone gets served, we will  
25 set a case management plan, and that may well take account of

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1 his situation as well as other situations. But I was attracted  
2 to the idea of this particular motion as one that could  
3 simplify this case on a very quick basis, and that's why I want  
4 to move that along. So just so everyone's clear, the motion to  
5 dismiss that is being filed on a group pleading basis, you can  
6 join in, you can not join in. If you have a motion to dismiss  
7 on some totally different basis, like they failed to plead with  
8 particularity or something like that, that doesn't have to be  
9 filed by January 9th.

10 MR. SOMMER: Understood.

11 THE COURT: We will set a date for the filing of that  
12 in due course.

13 MR. SOMMER: Thank you, Judge.

14 THE COURT: Okay?

15 MR. PAPAPETROU: Christos Papapetrou of the firm  
16 Levine Lee for Mr. Daniel Small. Just placing a marker in the  
17 same way Mr. Sommer did as to Mr. Small, preparing for the  
18 trial. I just wanted to make that clear for the Court.

19 THE COURT: Yes, thank you. Understood.

20 All right. So now that you know it's just going to be  
21 that single motion, albeit maybe with lots of joinders, how  
22 long do you want to respond?

23 MR. GLUCK: I think two or three weeks would be  
24 absolutely fine, your Honor.

25 THE COURT: That would be good. Okay. So that will

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1 be January 23rd. Reply papers January 30th. And we'll have  
2 oral argument on -- let's look at February 8th.

3 THE DEPUTY CLERK: February 8th, a Friday, is a trial  
4 day, with a 4:00 sentence and a 4:30 argument.

5 THE COURT: All right. We'll do it at 11:00. We'll  
6 interrupt the trial.

7 THE DEPUTY CLERK: Okay.

8 THE COURT: All right. So 11:00 on February 8th. At  
9 that time hopefully I'll be able to deal with the motion from  
10 the bench, but I don't know. But either way, we will set a  
11 case management plan. And that will be a case management plan  
12 that will include any other motions to dismiss and it will  
13 include coordinated discovery with the existing case and will  
14 include -- I can see now we probably won't be able to get this  
15 case ready for trial by May. We may even have to go to, god  
16 forbid, June. But in any event, we'll set a case management  
17 plan at that time.

18 All right. So is there anything else we need to take  
19 up today?

20 Yes.

21 MR. COOGAN: Your Honor, Matthew Coogan for David  
22 Steinberg again. I think Mr. Steinberg is probably going to be  
23 in the position not of saying just "Me too" or not "Me too" to  
24 Mr. Lauer's motion but wanting to say "Me too" and he should be  
25 dismissed for these other reasons, and I just want to be clear

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1 that we are able to file a motion and have it be heard on the  
2 same schedule as Mr. Lauer's motion.

3 THE COURT: What are the other reasons?

4 MR. COOGAN: Well, there are, say, off the top of my  
5 head, I believe three, three allegations, factual allegations  
6 against Mr. Steinberg that we have, you know, various reasons  
7 for saying they're insufficient, so it's not going to be only  
8 that we are in Mr. Lauer's group or not in Mr. Lure's group. I  
9 anticipate it would be, yes, we should be dismissed for that  
10 reason, but also --

11 THE COURT: So here's what I think makes sense in that  
12 regard. While no one is required to file a motion to dismiss  
13 other than joining or adding, whatever you want to say, on the  
14 group pleading motion, if you want to file on January 9th, you  
15 don't want to wait around for the later date -- which everyone  
16 else can wait for the later date without prejudice -- but if  
17 you want to file on January 9th on other grounds, you may and  
18 everyone else may do so if they want.

19 Plaintiff's counsel, after seeing all that, can then  
20 convene a conference call if you think you'll need more than  
21 two weeks to respond or if you want to sever those motions and  
22 just deal with the one that we've already discussed. So we'll  
23 see how that plays out. If it's just you, maybe we'll just  
24 hear it at the same time, but we'll see. I'm not precluding  
25 anyone from doing that if they want to move things quicker

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1 before that. Okay.

2 MR. COOGAN: Thank you, your Honor.

3 THE COURT: All right. Anything else?

4 MR. GLUCK: Two pieces of housekeeping, your Honor.

5 THE COURT: Yes.

6 MR. GLUCK: One is simply in response to the substance  
7 of the primary motion that is being brought by Mr. Lauer. I'll  
8 simply note for the Court that we suggest that the complaint  
9 contains sufficient detail for particularized defendants, that  
10 there was an editorial process where we filed a long complaint,  
11 we made decisions concerning the level of detail for a very  
12 significant set of acts over a period of time and each of the  
13 defendants' role as set forth in the Parties section. Just a  
14 bit of response there.

15 Concerning Mr. Lauer specifically and the Curtis  
16 Mallet firm, I wanted to alert the Court that there is a  
17 dispute concerning that firm's eligibility to represent any  
18 defendant in this matter. It is a former firm that was  
19 employed by PPVA; from the emails that I've seen and the  
20 reports that I've seen, there was near continuous contact and a  
21 representation by that firm in the critical period between  
22 April --

23 THE COURT: Wait a minute. Are you saying you're  
24 going to make a motion to disqualify?

25 MR. GLUCK: I'm saying we are. We have noticed this

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1 to Curtis Mallet. We have co-counsel at our firm who are  
2 handling this matter who have --

3 THE COURT: Hold on a minute. Let me just ask counsel  
4 in Curtis Mallet, are you going to oppose that motion?

5 MR. LAUER: Absolutely. My partner has been in  
6 contact with them. If they file the motion, we'll respond  
7 promptly.

8 THE COURT: Okay. So that motion, I want to put on a  
9 highly expedited basis. So when can you file your motion?

10 MR. GLUCK: We can file our motion within the next two  
11 weeks.

12 THE COURT: No, no, no.

13 MR. GLUCK: One week.

14 THE COURT: Let's see. One week would be  
15 December 26th. That's not a problem.

16 And can you respond in a week?

17 MR. LAUER: I'll be in Argentina. If your Honor would  
18 permit me, my partner Jacques Semmelman has been handling this.

19 MR. SEMMELMAN: Good morning, your Honor. For the  
20 record, Jacques Semmelman from Curtis Mallet. I'll be happy to  
21 respond within a week.

22 THE COURT: Terrific. Okay. So that would be  
23 January 2nd.

24 And no reply papers. We're going to hear that orally.  
25 Let's look at January 4th or 5th.

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1 THE DEPUTY CLERK: January 4th is a Friday.

2 THE COURT: Oh, okay. January 5th is perfect.

3 THE DEPUTY CLERK: 10 a.m. to 1, you have a  
4 suppression hearing. At 11, you have two conferences. At  
5 3:30, you have a sentencing and --

6 THE COURT: All right. 2:00 on Friday, January 4th.  
7 And I will decide that motion from the bench, if I possibly  
8 can, so that you then can move forward with your motion on  
9 January 9th if I don't grant the motion.

10 MR. SEMMELMAN: Just one thing, your Honor, if I may.  
11 On January 4th, is it possible to have it earlier in the  
12 morning? Because I am a Sabbath observer.

13 THE DEPUTY CLERK: We have a hearing from 10 to 1  
14 that's going to be interrupted by two conferences at 11.

15 THE COURT: All right. How about 9 a.m.?

16 MR. SEMMELMAN: That's perfect. Thank you.

17 THE COURT: Okay. Very good.

18 MR. SEMMELMAN: Thank you, your Honor.

19 THE COURT: Okay. Anything else?

20 MR. GLUCK: Yes, your Honor. One more housekeeping  
21 matter.

22 In terms of service, we intend to serve all defendants  
23 within a week. We have termed a set of defendants the Black  
24 Elk Opportunity Fund defendants. That excludes the two funds  
25 themselves but includes the members of those funds who received

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1 distributions from the Black Elk payout. A certain number of  
2 those defendants are foreign based. The majority of those  
3 named defendants have appeared in the Cayman liquidation and  
4 are represented by counsel in that Cayman liquidation. Our  
5 intent is to serve that counsel. To the extent that they are  
6 in China, it is possible that service could take longer than a  
7 week, but nevertheless we will effectuate service under the  
8 Hague rules in the Cayman Islands on their current counsel, to  
9 the extent they exist. There may be one, two, perhaps three  
10 defendants who don't fall within either of those categories --  
11 i.e., they're not represented by Cayman counsel in the Cayman  
12 liquidation and they are foreign located -- and for those,  
13 we'll send a letter to the Court.

14 THE COURT: Okay. So first of all, I will revise my  
15 original deadline. I'll give you till the end of December to  
16 effectuate service. But I understand there still may be one or  
17 two special cases, and you've alerted me to that, and we'll  
18 take that up as it comes. But everyone else by December 31st.

19 MR. GLUCK: Very good.

20 THE COURT: Okay. Anything else?

21 Well, it's been a real pleasure, folks, but we'll see  
22 you at 9 on January 4th.

23 ALL COUNSEL: Thank you, your Honor.

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